

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 04-11189
Non-Argument Calendar

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| FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT JUNE 2, 2005 THOMAS K. KAHN CLERK |
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D. C. Docket No. 03-00171-CR-1-CG

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES MOSLEY,
a.k.a. Charles Clinton Mosley,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Alabama

(June 2, 2005)

**ON REMAND FROM THE
SUPREME COURT OF THE UNITED STATES**

Before ANDERSON, BLACK and BARKETT, Circuit Judges.

PER CURIAM:

We previously affirmed the sentence in this case. United States v. Mosley, No. 04-11189 (11th Cir. Oct. 7, 2004). The Supreme Court has vacated our prior judgment and remanded the case to us for further consideration in light of Booker v. United States, 543 U.S. ___, 125 S.Ct. 738 (2005). Having reconsidered our decision pursuant to the Supreme Court's instructions, we reinstate our judgment affirming the sentence.

In our initial opinion, we declined to address Mosley's argument based on Blakely v. Washington, 542 U.S. ___, 124 S. Ct. 2531 (2004) because he did not raise it in his initial brief or in the district court. The Supreme Court's decision in Booker did not change this fact.

Following the well-established rule in this circuit, see United States v. Levy, 379 F.3d 1241, 1242 (11th Cir. 2004), reh'g en banc denied, 391 F.3d 1327 (11th Cir. 2004), issues that are not timely raised in the briefs are deemed abandoned. In United States v. Ardley, 242 F.3d 989, 990 (11th Cir. 2001), we applied this rule to a case remanded from the Supreme Court in light of Apprendi. Recently, we applied Ardley to a post-Booker remand and found that the defendant had abandoned his Booker claim because he failed to raise it at the district court or in his initial brief. United

States v. Dockery, __F.3d__, 2005 WL 487735 (11th Cir. Mar. 3, 2005).

Our opinion affirming the conviction and sentence in this case is accordingly
REINSTATED.